

TEACHERS' RETIREMENT BOARD

REGULAR MEETING

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SUBJECT: Update on Federal Legislation

ITEM NUMBER: 7b

ATTACHMENT(S): 1

ACTION: X

DATE OF MEETING: October 8, 1998

INFORMATION: \_\_\_\_

PRESENTER: Ms. DuCray-Morrill

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Attached is a comprehensive report from Hogan & Hartson on issues at the federal level. Ms. DuCray-Morrill will provide a verbal presentation at the meeting.

## **MEMORANDUM FOR THE CALIFORNIA STATE TEACHERS' RETIREMENT SYSTEM**

### **Washington Monthly Report**

A little over three weeks remain before Congress is scheduled to adjourn for the year. The Congressional GOP leadership had pushed off to September -- the month before adjournment -- much of the important legislation to be dealt with for the year, including budget and tax legislation and the 13 appropriations bills that are necessary to keep the Federal government running during the fiscal year that begins October 1. However, Washington is now transfixed by the White House scandal and a possible impeachment proceeding, with the scandal proving to be an even greater distraction than expected from Congressional business. All of this brings to mind the observation once made by Rep. Jim McDermott (D-Wash.) who after waiting his turn to speak at an endless committee hearing noted that, "Everything that can be said has been said, but not everyone has said it." Further, the fast approaching elections have heightened the already partisan atmosphere.

As the President and the GOP leadership in Congress prepare to face down on a host of tax and spending issues, even experienced Washington observers are at a loss to know how it will all come out in terms of legislative results. Will a politically weakened President accede to Congressional GOP initiatives in order to keep the country's business moving, as Congressional Republicans hope? Will the President seek to begin mending his stature as a leader by confronting the GOP-led Congress and wielding his veto pen prominently as the new fiscal year and Congress's desire to adjourn to campaign beckon? At this point, no one knows.

### **Mandatory Social Security**

We have worked very actively with STRS staff on this issue on a variety of fronts over the past month.

First, we worked with STRS staff to develop briefing materials separately tailored to the employer and employee groups who participate in STRS to educate them about the direct impact of mandatory coverage and to inculcate a sense of immediacy of the need for their grassroots response. We understand that STRS staff already has begun a series of briefings for both employer and employee groups in an effort to energize them on this issue.

Next, we joined Jennifer DuCray-Morrill at a meeting in Washington of the Coalition to Preserve Retirement Security, the coalition of State and local government groups and retirement systems taking on the mandatory coverage issue. This coalition is the successor to OPPOSE. At the coalition meeting, Jennifer reported in detail to the other States represented regarding STRS's active efforts and workplan in California and shared the STRS materials with the other States. The various other States reported on their new and ongoing grassroots activities. The overall plan of the coalition is to have an active and coordinated grassroots effort

in place by all of the affected States by the early Fall, to continue thereafter into next year. Another coalition meeting may be scheduled for late October. We will continue to coordinate with the Washington representatives of coalition members.

While in Washington, Jennifer participated in a September 10 briefing on Capitol Hill for the California Congressional delegation to explain the adverse impact that mandatory coverage would have on State and local governments and their employees in California. The briefing was well attended, with over 2 dozen Congressional staff members, along with representatives of various California government organizations. Jennifer made a very effective presentation, stressing in particular the harsh cost impact that mandatory coverage would have on school districts already struggling to cope with aging facilities and the class size reduction mandate. Joining Jennifer on the panel were Brian Webb, Deputy Director of the Washington Office of the Governor, who provided a good overview of the impact on California; Paul Cauley, Assistant City Administrative Officer for the City of Los Angeles regarding the impact on LA; Dwight Stenbakken of the League of California Cities describing the impact on smaller California municipalities; and Jim Burton of PERS outlining the cost impact on nonparticipating California employers covered by PERS as well as on State and local employers in other States.

The briefing and the handouts -- which included STRS's testimony before the House Ways and Means Committee and its briefing materials for STRS employers and employees -- provided to the staff from the various Congressional offices with a good introduction to the issue and a solid factual foundation upon which we can continue to build as the grassroots contacts from California get underway. We anticipate scheduling a round of follow-up meetings with the key California Congressional offices once Congress completes action in October on this year's legislative agenda.

On the afternoon of September 10, the same group of California representatives presented a condensed version of the briefing to the White House staff. In attendance from the White House were the Deputy Chief of Staff to the President, the Deputy Assistant to the President for Political Affairs, and the National Economic Council staff member who will be coordinating the Administration's efforts on Social Security Reform. The Director of the National Economic Council had been expected to attend, but was unable to at the last minute.

The White House staff mostly listened, periodically asking questions. Not surprisingly, they had a strong interest in the position of the local unions in California on the mandatory coverage issue, and it became quite clear that active grassroots involvement by the affected unions in California will play a pivotal role in our effort to dissuade the Administration from including a mandatory State and local coverage provision in any Social Security reform plan the Administration sends to Capitol Hill.

We had learned in advance of the meeting of White House plans to convene a summit on Social Security reform in December. We raised this matter at the White House meeting and secured a commitment from the White House staff that California would have a seat at the summit if it is convened.

The White House staff member coordinating the Administration's Social Security reform effort would give no indication of the Administration's position on the mandatory

coverage issue -- eschewing his predecessor's observation that mandatory co brainer" as part of Social Security reform -- and merely stating that "everything is on the table, and nothing is off the table." While such a statement is a standard bureaucratic line, in some ways it portends how the mandatory coverage issue would be presented in the context of a Social Security reform effort by the Administration: as part of a broad package of "haircuts" in which the mandatory coverage provision could be pitted against other even more painful provisions such as accelerating the increase in the normal retirement age, pitted against one another in the sense that dropping the mandatory coverage provision would have to be "offset" by increasing the pain somewhere else such as a boost in the normal retirement age.

The only substantive comment from the White House staff side was in the form of a question as to the acceptability of a possible option under which the mandatory coverage provision would be adopted now as part of a Social Security reform package but would have a substantially deferred effective date such as 10 years. This possible option apparently is premised on the theory that the blow on State and local governments might be eased if there were a longer transition period within which the State could adjust their plans. Our immediate reaction was that such a deferred effective date would simply defer, but not ultimately mitigate, the adverse cost impact on State and local governments.

Finally, the advice from key House staff who will be at the center of the Social Security reform debate is that we must recognize that any reform effort will inflict pain fairly widely and hence that the harsh cost impact of mandatory coverage on State and local governments and employees must be made abundantly clear to the Members of Congress from non-Social Security States who must carry that message forcefully to their peers involved in crafting the Social Security reform package. The further advice was that legislative proposals to mitigate the effects of the two "offsets" should not "get in the way" and become a distraction to the fight to stave off mandatory coverage. (As we have indicated in previous Monthly Reports, mandatory coverage proponents have noted that mandatory coverage would provide a complete solution to the offset concerns since the offsets would become moot over time.)

We will continue to be active on this issue in Washington, to coordinate closely with STRS staff, and to keep the Board apprised of key developments.

### **Elk Hills Compensation**

The battle rages on. We are continuing to work very closely with our leading allies in the Congress -- Rep. Bill Thomas (R-Bakersfield) on the Republican side and Rep. Vic Fazio (D-Sacramento) on the Democratic side -- in an effort to secure the necessary funding by Congress of the first \$36 million installment of compensation due for the State's interest in the Elk Hills Naval Petroleum Reserve under the settlement negotiated with the Federal government.

The House-Senate Conference on the Defense Authorization legislation continues to be deadlocked over the House provision sponsored by Rep. Thomas that would waive the appropriation requirement for payment of the installments of Elk Hills compensation to the State. Just as the Congressional appropriators had been concerned that payment of the Elk Hills compensation would count as new spending against budget caps that would require offsetting cuts in other programs, the Defense negotiators have now become concerned that payment of the Elk

Hills compensation under the Defense statute would count against budget limitations of a different character applicable to defense and in turn require offsetting cuts in defense spending. In addition, Sen. John McCain (R-Ariz.), the chief Senator negotiator on the Elk Hills provision, remains adamant that the original appropriations requirement should remain applicable. Rep. Thomas has undertaken a series of vigorous efforts to break this stalemate. In addition, the Governor has written a series of strong letters to the Senate negotiators, and the State Attorney General has written directly to Sen. McCain. Thus far, however, the Senate negotiators have refused to budge. The Conference on the Defense Authorization bill is winding up, and if the deadlock cannot be broken, the Thomas amendment waiving the appropriations requirement may be dropped from the final bill. Accordingly, the prospects are dimming for the Defense Authorization to serve as the vehicle for our Elk Hills compensation.

Nonetheless, we live to fight again another day. We already are working with Reps. Thomas and Fazio on the possibility of including the Elk Hills compensation in the expected year-end "continuing resolution". It is anticipated that as many as 6-7 of the 13 appropriations bills, including the Interior appropriations bill that was our original target, will not be signed into law before Congress adjourns. These outstanding measures then must be lumped together into a massive omnibus spending bill, termed a continuing resolution. The omnibus package is negotiated by the Congressional leadership and the Administration, and otherwise applicable budget caps, restrictions, and rules are waived right and left. As with any negotiation of such scope under such time pressure, the process is a free-for-all, exactly the type of opportunity we may need to slip in the bill.

At this point, the immediate task is to persuade the White House to include the Elk Hills compensation issue on the Administration's "must do" list of items for the continuing resolution. We have had a series of conversations with the senior White House staff on this matter, and are working closely with Rep. Fazio, who serves as the Chairman of the House Democratic Caucus and enjoys strong ties with the White House, in an effort to buttress White House support for inclusion on the "must do" list.

### **Legislation to Limit Use of State Law Class Action Securities Actions**

The House and the Senate have passed their respective versions (H.R. 1689; S. 1260) of legislation to curtail the use of State law and State courts for class action securities fraud claims involving publicly-traded companies.

The measures are now awaiting a House-Senate Conference to resolve the differences between them. Both measures contain provisions that would preserve the ability of State and local governments and pension plans to utilize State law securities fraud claims in State courts.

This legislation had been given priority by the GOP leadership in Congress earlier in the year. It remains to be seen whether the press of other business will leave this legislative project unfinished.

### **Legislation to Protect Pension Assets in Bankruptcy**

As reported earlier, the House-passed bankruptcy reform legislation (H.R. 3150) includes a provision that would protect pension assets held by tax-qualified defined benefit and defined contribution retirement plans, section 457 deferred compensation plans, section 4039b) annuities, and Individual Retirement Accounts from the creditors of a participant in a Federal bankruptcy proceeding. Under current law, only tax-qualified section 401(a) defined benefit and defined contribution plan assets are clearly so protected from a participant's bankruptcy.

The full Senate is expected to consider shortly its version of bankruptcy reform (S. 1301), and Sen. Orrin Hatch (R-Utah) is expected to offer a similar amendment to protect pension assets from a participant's creditors in bankruptcy. In addition, Sen. Hatch may offer a further amendment to exclude plan loans from discharge in bankruptcy court.

John S. Stanton

September 21, 1998